

Federal Communications Commission

DA 99-2564

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-331
Table of Allotments,) RM-9728
FM Broadcast Stations.)
(Madisonville and College Station, Texas))

DISPATCHED BY

NOV 22 11 12 AM '99

FCC MAIL SECTION

NOTICE OF PROPOSED RULE MAKING

Adopted: November 10, 1999

Released: November 19, 1999

Comment Date: January 10, 2000

Reply Date: January 25, 2000

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed by Sunburst Media, LP, ("Sunburst"), licensee of Station KAAG, Channel 241C2, Madisonville, Texas, proposing the reallocation of Channel 241C2 from Madisonville, Texas, to College Station, Texas, and modification of its license to specify operation at College Station. Sunburst indicated that it would file an application for Channel 241C2 at College Station, if the channel is allotted to the community.

2. Sunburst filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Sunburst states that Channel 241C2 may be allotted to College Station consistent with the Commission's separation requirements and would provide full principal community service over the proposed community of license. Further, the proposed reallocation will provide College Station with its third commercial service, increase its service to the surrounding communities and will not deprive Madisonville of local service as Madisonville will continue to be served by Stations KMVL(AM) and KMVL(FM), co-owned by Hunt Broadcasting. In further support of its request, Sunburst points out that College Station with a population of 52,456 people is substantially larger than Madisonville with a population of 3,569 people and does not currently receive the same level of local service as Madisonville. Sunburst contends that since Madisonville and College Station receive service from more than five full-time aural services and that Channel 241C2 would not provide a first local service to either community, the Commission should review the proposal under priority four, other public interest matters. Sunburst believes that the reallocation of Channel 241C2 to

College Station, providing a third commercial service, will result in a preferential arrangement of allotments under the Commission's allotment priorities. Sunburst indicates that it intends to use a new transmitter site and has provided a gain and loss study for Madisonville and College Station.

3. We believe Sunburst's proposal warrants consideration since the reallocation of Channel 241C2 from Madisonville, Texas, to College Station, Texas, could provide the larger community of College Station with its first competitive FM service under our allotment priorities.¹ In addition, the proposed reallocation and change of community of license to College Station would not result in a loss of sole local service to Madisonville since Stations KMVL(AM) and KMVL(FM) will remain licensed to the community.² A staff engineering analysis has determined that Channel 241C2 can be allotted to College Station in compliance with the Commission's minimum distance separation requirements at Sunburst's specified site.³ Our analysis also shows that although Station KAGG will provide 100 percent coverage to the Bryan-College Station Urbanized Area from its proposed site, Station KAGG will not be moving into the urbanized area as it currently serves the Bryan-College Station Urbanized Area from its licensed site at Madisonville and the reallocation does not involve a first local service.⁴ Therefore, a Tuck analysis will not be required for the reallocation to College Station.⁵ As requested, we shall also propose to modify the license for Station KAGG to specify operation on Channel 241C2 at College Station, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 241C2 at College Station.

4. In view of the fact that the proposed allotment would provide an additional local service to College Station, Texas, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 241C2 to College Station. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Madisonville and College Station, as follows:

¹ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

² MM Docket No. 99-236, DA No. 99-1234, released June 25, 1999, proposes the allotment of Channel 267A at Madisonville, Texas, in response to a petition filed by Leon Hunt.

³ The coordinates for Channel 241C2 at College Station are 30-45-26 and 96-24-33.

⁴ If a station requests to change its community of license to one that is outside an urbanized area but whose signal would place a city grade, 70 dBu signal, over 50% or more of an Urbanized Area, the proponent is required to provide the same showings as currently required for those parties seeking to move to a community within an Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

⁵ See RKO General (KFRC), 5 FCC Rcd 3222 (1990) and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). Under Tuck, the Commission considers evidence under three factors to determine whether a suburban community deserves a first local service preference: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent community; and (3) the interdependence of the suburban community with the central city.

Community	Present	Channel No.
		Proposed
Madisonville, Texas	241C2, 263C3	263C3
College Station, Texas	236C2	236C2, 241C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **January 10, 2000**, and reply comments on or before **January 25, 2000**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Gregg P. Skall
Lee G. Petro
Pepper & Corazzini, L.L.P
1776 K Street, N.W., Suite 200
Washington, D. C. 20006

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any

reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the

Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D. C.